

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

DONALD EMERY, THE DOG HOUSE BAR)	C/A No. 4:08-cv-03351-TLW
& GRILL, INC., et al.,)	
Plaintiffs,)	
vs.)	
THE CITY OF MYRTLE BEACH, a municipal)	ANSWER
corporation,)	(Jury trial demanded)
Defendant.)	
)	

Defendant The City of Myrtle Beach, answering the Complaint, respectfully would show unto this Honorable Court as follows:

AS A FIRST DEFENSE

1. The allegations of the Complaint fail to state a claim upon which relief can be granted; accordingly, they should be dismissed.

AS A SECOND DEFENSE
(Denial)

2. Defendant denies each and every allegation of the Complaint which is not admitted.
3. As to Paragraphs 1 - 6, Defendant admits that jurisdiction and venue are proper in this Court and that the parties are correctly described.

4. As to Paragraph 7, Defendant denies that Plaintiff Myrtle Beach Bike Week, LLC has been conducting advertising and promoting motorcycle rally events in the City of Myrtle Beach and participating in such events for over 20 years; Defendant is without sufficient information to form a belief as to the remaining allegations of Paragraph 7, and accordingly, Defendant denies them and demands their strict proof.

5. Defendant admits Paragraph 8.

6. As to Paragraph 9, Defendant admits that on or about September 23, 2008, it passed certain ordinances, including Ordinance 2008-68, Ordinance 2008-57, and Ordinance 2008-58; Defendant denies Plaintiffs' the remaining allegations of Paragraph 9 and would refer to the enacted ordinances for a correct interpretation of their context, intent and meaning.

7. Defendant denies Paragraph 10.

8. As to Paragraph 11, Defendant admits that Plaintiffs have brought their action pursuant to 42 USC § 1983, but Defendant denies that it has violated Plaintiffs' First, Fourteenth, and Eighth Amendments of the U.S. Constitution and any provisions of the Constitution of the State of South Carolina.

9. Defendant denies Paragraphs 12 - 15.

10. Defendant denies Paragraph 16.

11. Paragraph 17 is a pleading paragraph to which no response is required.

12. Defendant denies Paragraphs 18 - 23.

13. Paragraph 24 is a pleading paragraph to which no response is required.

14. Defendant denies Paragraphs 25 and 26.

15. Paragraph 27 is a pleading paragraph to which no response is required.

16. Defendant denies Paragraphs 28 - 31.

17. Paragraph 32 is a pleading paragraph to which no response is required.

18. Defendant denies Paragraph 33.

19. Paragraph 34 is a pleading paragraph to which no response is required.

20. Defendant denies Paragraphs 35 - 37.

AS A THIRD DEFENSE

(Lack of Standing)

21. Defendant realleges each and every defense stated above as fully as if repeated here.
22. Plaintiffs do not have standing to bring all of the claims set forth in their Complaint.

AS A FOURTH DEFENSE
(Immunity)

23. Defendant realleges each and every defense stated above as fully as if repeated here.
24. Defendant is immune from suit under the provisions of the Eleventh Amendment of the U.S. Constitution and the statutes of the State of South Carolina.

AS A FIFTH DEFENSE
(Tort Claims Act)

25. Defendant realleges each and every defense stated above as fully as if repeated here.
26. Defendant is a political subdivision of the State of South Carolina and any claims against it arising under the South Carolina Tort Claims Act are limited by the terms of the Act. Plaintiffs' state claims are barred and/or limited by the provisions of the South Carolina Tort Claims Act, including, but not limited to their claim for Tortious Interference with Business and any state claim for attorneys fees.

AS A SIXTH DEFENSE
(Lack of Ripeness/No Justiciable Controversy)

27. Defendant realleges each and every defense stated above as fully as if repeated here.
28. Plaintiffs' claims as set forth in their Complaint are not ripe, and no justiciable controversy exists at this time.

AS A SEVENTH DEFENSE
(Statute of Limitations)

29. Defendant realleges each and every defense stated above as fully as if repeated here.

30. Plaintiffs' claims for damages are barred by the applicable statutes of limitation of the State of South Carolina.

AS AN EIGHTH DEFENSE
(Failure to Seek Administrative Remedies)

31. Defendant realleges each and every defense stated above as fully as if repeated here.
32. Plaintiffs have failed to avail themselves of the administrative remedies available to redress their claims, and Plaintiffs are now barred from seeking the relief requested in their Complaint.

AS A NINTH DEFENSE
(Bad faith, unclean hands, laches, delay)

33. Defendant realleges each and every defense stated above as fully as if repeated here.
34. Plaintiffs seek a temporary injunction and request that the Court balance equities between the parties.
35. Defendant pleads Plaintiffs' bad faith, unclean hands, laches, and delay as equitable defense to Plaintiffs' claims for injunctive relief.

AS A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Attorneys Fees and Costs)

36. Defendant realleges each and every defense stated above as fully as if repeated here.
37. Defendant is informed and believes that if it is the prevailing party on Plaintiffs' claims brought pursuant to 42 USCA § 1983, it would be entitled to attorneys fees and costs pursuant to 42 USCA § 1988.
38. Defendant is informed and believes that under the facts set forth in the pleadings, it is entitled to attorneys fees and costs in an amount to be determined by this Honorable Court.

WHEREFORE, Defendant prays as follows:

- A. That the Complaint be dismissed;
- B. That it be granted attorneys fees and costs; and
- C. That it be granted such further and other relief as this Court may deem just and proper.

/s Cynthia Graham Howe /s Michael W. Battle
Cynthia Graham Howe #4934 /Michael W. Battle #1243
cghowe@sccoast.net mbattle@sccoast.net
BATTLE , VAUGHT & HOWE, P.A.
Attorneys for Defendant City of Myrtle Beach
1200 Main Street
P.O. Box 530
Conway, SC 29528
(843)248-4321 (phone)
(843)248-4512 (fax)

November 17, 2008